Supreme Court, U.S.
FILED
JUN 29 1992
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92-36

NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1992

PATRICIA A. NEUHAUS,
Petitioner,

v.

METROPOLITAN LIFE INSURANCE COMPANY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE KENTUCKY COURT OF APPEALS

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QUESTIONS PRESENTED

1. Whether, in light of the recent Supreme Court case of *FMC Corp.* v. *Holliday*, 498 U.S. ____, 112 L. Ed. 2d 356, 111 S. Ct. 403 (1990), recovery for denial of life insurance benefits under an "insured" plan based on a line of Kentucky cases directed specifically at the insurance industry is blocked by the preemption provisions of ERISA, the Employee Retirement Income Security Act of 1974, 29 U.S.C., Section 1001 *et seq.*

2. Whether the standard of review to be applied, in the event ERISA preempts this case, is a "de novo" standard since the Employee Benefit Policy does not expressly grant the plan administrator power to construe the terms of the plan, or deference to determine eligibility.

LIST OF PARTIES

The parties to the proceedings below are as follows:

Petitioner
Patricia A. Neuhaus

Respondent
Metropolitan Life Insurance Company

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NO. _____

IN THE

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OCTOBER TERM, 1992

PATRICIA A. NEUHAUS,

Petitioner,

v.

METROPOLITAN LIFE INSURANCE COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE KENTUCKY COURT OF APPEALS

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

Petitioner herein prays that a Writ of Certiorari issue to the Kentucky Court of Appeals to review that Court's June 21, 1991 Judgment and Order in this proceeding.

Opinions Below

The June 21, 1991 Judgment and Opinion of the Kentucky Court of Appeals from which review is sought is not reported, but is attached as Appendix A to this Petition.

The February 13, 1990 Judgment of the Circuit Court of Kenton County, Kentucky, Sixteenth Judicial Circuit from which Petitioner appealed is not reported, but is attached as Appendix B to this Petition.

Jurisdiciton

On June 21, 1991, the Kentucky Court of Appeals entered the Judgment from which review is sought. Jurisdiction is now conferred upon this Court by 28 U.S.C. Section 1257(a). The time for filing this petition for writ of certiorari began to run on April 1, 1992, the date of the Order of the Kentucky Supreme Court denying Petitioner's timely filed motion for Discretionary Review. (Appendix E).

Statutes and Rules Involved

Section 1144(a), Title 29, United States Code provides as follows:

> Except as otherwise provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title. This section shall take effect on January 1, 1975.

29 U.S.C. § 1144(a).

Section 1144(b)(2)(A), Title 29, United States Code provides as follows:

> Except as provided in subparagraph (B), nothing in this subchapter shall be construed to exempt or relieve any person from any law of any State which regulates insurance, banking, or securities.

29 U.S.C. § 1144(b)(2)(A).

Section 1144(b)(2)(B), Title 29, United States Code provides as follows:

> Neither an employee benefit plan described in section 1003(a) of this title, which is not exempt under

> section 1003(b) of this title (other than a plan established primarily for the purpose of providing death benefits), nor any trust established under such a plan, shall be deemed to be an insurance company or other insurer, bank, trust company, or investment company or to be engaged in the business of insurance or banking for purposes of any law of any State purporting to regulate insurance companies, insurance contracts, banks, trust companies, or investment companies.

29 U.S.C. § 1144(b)(2)(B).

Statement of the Case

Petitoner's late husband, Paul B. Neuhaus ("Neuhaus"), was a long-time employee of Litton Industries. The employee benefit plan under which he and other Litton Industry employees were covered was purchased from Respondent. A heart patient faced with seriously declining health, Neuhaus accepted early retirement on July 1, 1987, a few months after his Sixty-First birthday. He died a month and a half later on August 15, 1987. (Transcript of Record [Tr.R.], p. 47).

This action was initiated by Petitioner because of Respondent's refusal to pay death benefits owed to her under the group insurance plan under which Neuhaus was covered. The death benefits were due Petitioner based upon a clause in the policy which stated that if an employee became totally disabled prior to his sixtieth birthday, and continued to be so totally disabled beyond cessation of his life insurance and until his death, the Insurance Company would pay to the Beneficiary of record the amount of the Employee's Death Benefits at the date of his death. (Tr.R., p. 48).

Respondent's refusal to pay was based upon a dispute over whether Neuhaus was totally disabled prior to his sixtieth birthday and whether therefore Petitioner was entitled to the death benefits.

Co-workers in their affidavits say that they performed most of Neuhaus' work for him, due to his drastically poor health, since before he turned 60. They described him as completely non-productive. Affidavits describing Neuhaus' poor health and disability were submitted by his three physicians, one of whom specifically described Neuhaus as disabled from the age of 60. (Tr.R., p. 47 & 48).

Additionally, a considerable body of Kentucky law was presented to the Trial Court which held that total disability does not mean "absolute helplessness" regardless of the strictness of a policy definition. This distinctive line of Kentucky insurance case law allows recovery in disability cases even where claimants were able to go in to work.

Despite evidence presented by Petitioner as to Neuhaus' disability on February 13, 1990, the Sixteenth Judicial Circuit Court of Kenton County, Kentucky granted respondent's Motion for Summary Judgment. The Court stated only that it found no genuine issue of material fact. (Appendix B).

Petitioner thereafter filed in the Circuit Court a timely Motion to Reconsider. On May 14, 1990, the Circuit Court overruled Petitioner's Motion to Reconsider. (Appendix C).

Petitioner thereafter filed a timely appeal to the Kentucky Court of Appeals. In her brief, Petitioner argued that her claims are not preempted by ERISA because of ERISA's "savings" clause, 29 U.S.C. § 1144(b)(2)(A), and under the recent Supreme Court case of *FMC Corp.* v. *Holliday*, 498 U.S. ____, 112 L. Ed. 2d 356, 111 S. Ct. 403 (1990).

On June 21, 1991, The Kentucky Court of Appeals affirmed the lower court and issued the opinion of which Petitioner seeks review. (Appendix A). The Court of Appeals stated that ERISA "has, with limited exceptions, preempted state law concerning administration of employee benefit plans covered by ERISA," and "While appellant argues that certain exceptions for insurance make ERISA inapplicable to the case at bar, we disagree." After a timely filed Petition for Rehearing to the Kentucky Court of Appeals, the Motion was denied on November 8, 1991. (Appendix D).

Petitioner thereafter filed a timely Motion for Review by the Supreme Court of Kentucky which was denied on April 1, 1992. (Appendix E).

REASONS FOR GRANTING THE WRIT

The Kentucky Court of Appeals erred by failing to consider a controlling case by this Court when affirming Respondent's Motion for Summary Judgment, and used the wrong standard of review in the event ERISA does apply.

I. THE KENTUCKY COURT OF APPEALS ERRED BY FAILING TO CONSIDER A CONTROLLING DECISION BY THIS COURT WHEN AFFIRMING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT.

The Kentucky Court of Appeals erred by failing to take into consideration the ground breaking Supreme Court case of *FMC Corp.* v. *Holliday*, 498 U.S. ____, 112 L. Ed. 2d 356, 111 S. Ct. 403 (1990), when it affirmed the trial court's Order granting Respondent's Summary Judgment Motion. *FMC* directly impacts the instant case because it specifically distinguishes between the status of insured plans and self-insured plans in regard to exemption from state laws regulating insurance. In that case, this Court stated as follows:

> Our interpretation of the deemer clause makes clear that if a plan is insured, a state may regulate it indirectly through regulation of its insurer and its insurer's insurance contracts; if the plan is uninsured, the State may not regulate it.

FMC Corp. v. *Holliday*, 498 U.S. ____, ____, 112 L. Ed. 2d 356, 368, 111 S. Ct. 403, 411 (1990).

The portion of the Court's opinion in *FMC* quoted above is dispositive of the issue at hand. First, the plan under which Petitioner's husband was covered was an "insured" plan. The plan had purchased insurance from Metropolitan Life Insurance for their participants. As this Court noted in *Metropolitan Life Insurance Co.* v. *Massachusetts*, 471 U.S.

724, 85 L. Ed. 2d 728, 105 S. Ct. 2380 (1985), "Plans may self-insure or they may purchase insurance for their participants. Plans that purchase insurance — so-called 'insured plans' — are directly affected by state laws that regulate the insurance industry."

Next, the distinctive line of Kentucky cases relied upon by Petitioner, which is aimed directly at the insurance industry, is an integral part of Kentucky's insurance law. The three elements which collectively comprise insurance law in Kentucky are, of course, statutory law, administrative law, and case law. All three elements are essential and work together to regulate the field of insurance in Kentucky.

Petitioner's cause of action is not based on "laws of general application" as Respondent would have the Court believe. The instant case is to be distinguished from *Pilot Life Insurance Co.* v. *Dedeaux*, 481 U.S. 41, 95 L. Ed. 2d 39, 107 S. Ct. 1549 (1987), in which the Petitioner's cause of action was based on a general state common law cause of action having its roots generally in tort or contract law. It was not specifically directed toward the insurance industry. In the case at bar, Petitioner's cause of action is based upon a very specific line of Kentucky cases geared directly toward regulation of the insurance industry and would be of no use to a party involved in a non-insurance case.

State laws regulating insurance have been in place for many years. As evidenced by *FMC Corp.* v. *Holliday*, ERISA was not implemented to upset these laws as they relate to the insurance industry. ERISA sought to enable employers and groups of employers to provide benefits to their employees as an alternative to paying the exhorbitant rates charged for individual coverage by insurance companies. Congress intended to protect the participants in these plans by providing for minimum standards in regard to benefits, disclosure requirements and funding requirements.

This Court held in *FMC Corp.* v. *Holliday*, that state laws regulating insurance are not preempted by ERISA when ap-

plied to cases relating to "insured" employee benefit plans. Therefore, Petitioner urges the Supreme Court to maintain this position and declare in the instant case, that ERISA, as applied to the "insured" benefit plan in question, does not preempt Kentucky's distinctive line of cases which regulates insurance. If not, the court will send a message to the insurance industry that they are beyond judicial review and that in effect no law may regulate their actions.

II. THE KENTUCKY COURT OF APPEALS APPLIED THE WRONG STANDARD OF REVIEW IN THE EVENT ERISA DOES APPLY.

Finally, even if this Court holds that ERISA preempts this case, the Court of Appeals erred in finding itself bound by a deferential "abuse of discretion" standard rather than the "de novo" standard mandated by *Firestone Tire & Rubber Co.* v. *Bruch*, 489 U.S. 101, 103 L. Ed. 2d 80, 109 S. Ct. 948 (1989). In *Firestone*, the "de novo" standard was used because, as at bar, there was no evidence that the termination pay plan in question *expressly* gave the administrator the power to construe the terms of the plan, or that the administrator's eligibility determination complained of was to be given deference.

Applying *Firestone* to the facts in this case, it is clear that the "de novo" standard is to be used in the event ERISA preempts state law. The deceased's employee benefit plan policy reveals no power to determine benefits eligibility or to construe terms as called for in *Firestone* before a deferential standard is to be applied.

There is no "specific" language in the benefit plan policy regarding "eligibility," and no discretionary language at all. Neither does the language used come close to granting "discretion. . . . 'to construe the terms of the Plan,' " to the fiduciary or administrator.

Conclusion

WHEREFORE, Patricia A. Neuhaus, Petitioner, prays that a writ of certiorari issue from this Honorable Court to review the judgment of the Kentucky Court of Appeals below. If the petition is granted, Petitioner prays that the judgment of the Kentucky Court of Appeals be reversed, and judgment rendered in favor of Petitioner, or, in the alternative, remanded with appropriate instructions to the trial court below.

Respectfully submitted,

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APPENDIX A

NOT TO BE PUBLISHED

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

NO. 90-CA-1085-MR

PATRICIA A. NEUHAUS
APPELLANT

v.

METROPOLITAN LIFE INSURANCE COMPANY
APPELLEE

APPEAL FROM KENTON CIRCUIT COURT
HON. RAYMOND E. LAPE, JR., JUDGE
CIVIL ACTION NO. 88-CI-1605

AFFIRMING
(Rendered June 21, 1991)

BEFORE: LESTER, Chief Judge, DYCHE and WILHOIT, Judges.

LESTER, CHIEF JUDGE. This is an appeal from a summary judgment in favor of the defendant in a breach of contract action. Appellant claims that Metropolitan Life Insurance Company wrongfully refused to pay benefits due her from an employment-related life insurance policy covering her deceased husband. Having reviewed the entire record herein, we affirm the summary judgment.

Paul Neuhaus was employed by Litton Unit Handling Systems from 1968 until his retirement on July 1, 1987. As part of his employment, he was provided coverage with a group insurance plan issued and administered by Metropolitan. The plan provided that coverage ceased upon termination of employment unless the employee exercised his conversion option. Mr. Neuhaus retired and did not apply for a conversion policy within the required time period. However, appellant bases her claim for death benefits upon a third provision which allows for continuation of coverage if an employee, prior to his sixtieth birthday, becomes totally disabled and remains so until the time of death.

Neuhaus' sixtieth birthday was May 8, 1986. The record is clear that Neuhaus was having serious health problems before his birthday but it is likewise clear that he continued to work continuously from before his sixtieth birthday until he retired on July 1, 1987. Appellant's contention is that he was nevertheless totally disabled under Kentucky case law as evidenced by affidavits of co-workers. It is argued that there are at least genuine issues of fact as to the appellant's disability so as to preclude the summary judgment granted herein.

Appellee, on the other hand, has maintained throughout that this action is govenred by ERISA which preempts state law concerning the administration of employee benefit plans and that there is no question of fact that Neuhaus was not *totally* disabled.

The Employee Retirement Income Security Act of 1974, 29 U.S.C. Section 1001, *et seq.*, (hereinafter ERISA) has, with limited exceptions, preempted state law concerning administration of employee benefit plans covered by ERISA. *Metropolitan Ins. Co.* v. *Smith*, Ky. App., 731 S.W.2d 1 (1987). While appellant argues that certain exceptions for insurance make ERISA inapplicable to the case at bar, we disagree. Instead, we believe *Smith*, *supra*, is dispositive of this case and that summary judgment was proper.

In *Smith*, *supra*, this Court upheld the insurer's determination that a claimant was not "totally disabled" based upon the

findings of two (2) experts that the claimant could still do some types of work. *Id.* at 1. In that case, the claimant had ceased working upon his own physician's conclusion that he was totally disabled. *Id.* In the case at bar, appellant could not present any evidence that Mr. Neuhaus was totally disabled before his sixtieth birthday. The affidavits of co-workers that they "covered" for him during the past year do not dispute the fact that he continued to work full-time and, by all appearances, performed his job and collected his paycheck. The physician's report opined that Mr. Neuhaus was operating under a disability but did not state that he was totally disabled prior to his retirement.

In *Firestone Tire & Rubber Co.* v. *Bruch*, 489 U.S. 101, 109 S.Ct. 948 (1989), the U.S. Supreme Court addressed the appropriate standard of judicial review of benefit determinations by fiduciaries or plan administrators under ERISA. Pursuant to *Firestone*, this Court and the trial court below are bound by an abuse of discretion standard.

ERISA was enacted to promote the interests of employees and their beneficiaries and to protect contractually defined benefits. *Shaw* v. *Delta Airlines, Inc.*, 463 U.S. 85, 103 S.Ct. 2890, 77 L.Ed.2d 490 (1983); *Massachusetts Mutual Life Ins. Co.* v. *Russell*, 473 U.S. 134, 105 S.Ct. 3085, 87 L.Ed.2d 96 (1985). However, where, as here, the benefit plan gives the administrator or fiduciary discretionary authority to determine benefits, we must uphold that determination unless there is an abuse of discretion. The determination that Mr. Neuhaus was not totally disabled prior to his sixtieth birthday is in accordance with his contractually defined benefits and does not constitute an abuse of discretion.

Even if we were to consider the denial under a de novo review standard or, for that matter, under the Kentucky cases relied upon by appellant, we would nevertheless uphold the judgment herein. There is simply no evidence that Neuhaus was totally disabled as defined by the terms of the plan. [*See, also, Perry* v. *Simplicity Engineering*, 900 F.2d 963 (6th Cir. 1990), where benefits were denied and the decision upheld on

de novo review because the insured was still working during the required period.]

DYCHE, JUDGE, CONCURS.

WILHOIT, JUDGE, CONCURS IN RESULT ONLY.

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APPENDIX B

COMMONWEALTH OF KENTUCKY
SIXTEENTH JUDICIAL CIRCUIT
KENTON CIRCUIT COURT
FIRST DIVISION

NO. 88-CI-1605

PATRICIA A. NEUHAUS
PLAINTIFF

VS.

METROPOLITAN LIFE INSURANCE COMPANY
DEFENDANT

ORDER

(Entered February 13, 1990)

This matter is before the Court on the motion of the Defendant filed August 28, 1989, for Summary Judgment, requesting a dismissal of the Complaint on the grounds there are no genuine issues of material fact and that the Movant/Defendant is entitled to Judgment as a matter of law.

The Court granted a sixty day request for additional time within which the Plaintiff could respond, responses having been made, and the Court having reviewed the Memorandum in support of the motion for Summary Judgment, the Memorandum in opposition to motion for Summary Judgment, and the Court being sufficiently advised;

IT IS NOW, THEREFORE, ORDERED AND ADJUDGED that the motion for Summary Judgment requested by the Defendant dismissing the Complaint on the grounds that there are no genuine issues of material fact and that the Movant/Defendant is entitled to Judgment as a matter of law is SUSTAINED.

This is a final appealable Order. There is no just cause for delay.

/s/ RAYMOND E. LAPE, JR.,

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1 copy — Hon. Arnold Taylor

APPENDIX C

COMMONWEALTH OF KENTUCKY
SIXTEENTH JUDICIAL CIRCUIT
KENTON CIRCUIT COURT
FIRST DIVISION

NO. 88-CI-1605

PATRICIA A. NEUHAUS,
PLAINTIFF,

vs.

METROPOLITAN LIFE INSURANCE CO.,
DEFENDANT.

ORDER
(Entered May 14, 1990)

Plaintiff, through counsel, having moved The Court to reconsider its Order of February 13, 1990, sustaining Defendant's Motion for Summary Judgment, and The Court being fully and sufficiently advised,

IT IS HEREBY ORDERED by The Court that said Motion to Reconsider is OVERRULED.

So ORDERED this 14th day of May, 1990.

/s/ RAYMOND E. LAPE, JR.
JUDGE

Distribution:
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One Copy — Hon. Garry L. Edmondson

APPENDIX D

COMMONWEALTH OF KENTUCKY
COURT OF APPEALS

NO. 90-CA-001085-MR

PATRICIA A. NEUHAUS
APPELLANT

v.

METROPOLITAN LIFE INSURANCE COMPANY
APPELLEE

ORDER DENYING PETITION FOR REHEARING
(Entered November 8, 1991)

BEFORE: LESTER, Chief Judge, DYCHE and WILHOIT, Judges.

The Court having considered the Petition for Rehearing and being otherwise sufficiently advised, it is ORDERED that the same is hereby DENIED.

/s/ R. W. DYCHE
JUDGE, COURT OF APPEALS

APPENDIX E

SUPREME COURT OF KENTUCKY

91-SC-947-D
(90-CA-1085)

PATRICIA A. NEUHAUS

MOVANT

v.

METROPOLITAN LIFE INSURANCE COMPANY

RESPONDENT

ORDER DENYING DISCRETIONARY REVIEW

The motion for review of the decision of the Court of Appeals is denied.

ENTERED April 1, 1992.

/s/ ROBERT F. STEPHENS
Chief Justice

Supreme Court, U.S.
FILED
JUL 29 1992
OFFICE OF THE CLERK

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PATRICIA A. NEUHAUS,
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METROPOLITAN LIFE INSURANCE COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the Kentucky Court of Appeals

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RESPONDENT METROPOLITAN LIFE INSURANCE COMPANY'S BRIEF IN OPPOSITION

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

No. 92-36

PATRICIA A. NEUHAUS,
Petitioner,

v.

METROPOLITAN LIFE INSURANCE COMPANY,
Respondent.

On Petition for a Writ of Certiorari to the Kentucky Court of Appeals

---

RESPONDENT METROPOLITAN LIFE INSURANCE COMPANY'S BRIEF IN OPPOSITION

Respondent Metropolitan Life Insurance Company ("MetLife") respectfully requests that this Court deny the Petition for Writ of Certiorari seeking review of the Kentucky Court of Appeals judgment in this case. That decision, which has not been published, is included in Petitioner's brief at Appendix A.

STATEMENT OF THE CASE

Petitioner's deceased spouse, Paul B. Neuhaus ("Neuhaus"), was an employee of Litton Unit Handling Systems ("Litton") and a participant in the Litton employee benefit plan ("Plan"). MetLife issued a policy of group life insurance to Litton to provide certain life insurance benefits to eligible Plan participants and their beneficiaries. Under the terms of the Plan, MetLife has discretion to determine eligibility for benefits, construe Plan terms, and review appeals from claim denials.

The Plan provision upon which Petitioner bases her claim provides for continuation of life insurance coverage if an employee, "*prior to his sixtieth birthday*," becomes "totally disabled" and remains continuously so "totally disabled" until the time of his death. (Emphasis added.) The Plan defines "totally disabled" as "to be wholly prevented thereby from engaging in any and every business or occupation and from performing any work for compensation or profit."

The salient fact in this case is that Neuhaus *continuously worked* at his full-time job with Litton and collected his regular paycheck, both prior to and after his sixtieth birthday (May 8, 1986), until he retired on June 30, 1987. Petitioner nonetheless claims that Neuhaus was in poor health prior to age sixty and "disabled from the age of 60" (Petition at 4) and that she should therefore be entitled to receive the life insurance benefits under the Plan's disability continuation of life insurance provision.

The Kentucky Court of Appeals, affirming the Circuit Court's grant of summary judgment to MetLife, found "no evidence that Neuhaus was totally disabled as defined by the terms of the plan" (Petitioner's Appendix at 3a), no doubt because Neuhaus worked continuously at his usual job prior to and for many months after his sixtieth birthday. The Kentucky Court of Appeals held that Petitioner's state common law contract cause of action was preempted by the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §§ 1001 *et seq.* Furthermore, the Court of Appeals observed that, "[e]ven if we were to consider the [claim] denial . . . under the Kentucky cases relied upon by appellant, we would nevertheless uphold the judgment herein." (Petitioner's Appendix at 3a.) Although the Court of Appeals applied the abuse of discretion standard of review to uphold MetLife's claim determination, it also noted that the result would be the same under a *de novo* review standard. (Petitioner's Appendix at 3a.)

The Kentucky Supreme Court denied Petitioner's Motion for Discretionary Review.

REASONS WHY THE PETITION SHOULD BE DENIED

NO RULE 10 BASIS FOR GRANT OF THE WRIT HAS BEEN SHOWN.

Petitioner has failed to present "special or important" reasons why this Court should grant discretionary review on a writ of certiorari under Rule 10. Contrary to Petitioner's assertions, the decision of the Kentucky Court of Appeals comports with the holdings of this Court. Moreover, as the Kentucky Court concluded, even if Kentucky law is not preempted by ERISA, Petitioner would still lose because there is no evidence that Neuhaus was "totally disabled" from any and every occupation prior to age sixty and continuously until his death. On the contrary, the evidence shows that Neuhaus worked at his regular full-time job and earned his regular salary up to and for many months beyond his sixtieth birthday. Based on these plain facts, there is simply no conceivable construction of the Plan's "totally disabled" provision under applicable federal common law, or even under Kentucky law, by which a court could conclude that Neuhaus was eligible for disability continuation of life insurance benefits under the Litton Plan.

A. The Kentucky Court Of Appeals Correctly Held That Kentucky Common Law Is Preempted By ERISA; Even If Kentucky Law Did Apply, MetLife's Claim Determination Would Be Upheld.

The Kentucky Court of Appeals correctly held that Petitioner's state law breach of contract cause of action was preempted by ERISA. The distinction between insured and self-insured plans, which this Court made in *FMC Corp. v. Holliday*, 498 U.S. ——, 112 L.Ed.2d 356, 111 S. Ct. 403 (1990), in analyzing ERISA's "deemer" clause, ERISA § 514(b)(2)(B), 29 U.S.C. § 1144(b)(2)

(B), does not control the outcome of the case at bar. Rather, the controlling law in this case are this Court's holdings in *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41 (1987), and *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987), which were undisturbed by *FMC*. These decisions hold that ERISA preempts state law contract causes of action relating to claims for ERISA plan benefits.

The "distinctive" (but unnamed) Kentucky cases to which Petitioner apparently refers are simply contract cases decided on their own particular facts. Therefore, under the "business of insurance" analysis discussed in *Pilot Life*, the Kentucky cases do not "regulate insurance" so as to be saved from preemption under ERISA's "saving" clause, ERISA § 514(b)(2)(A), 29 U.S.C. § 1144 (b)(2)(A). *See Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. at 48-51.

In her briefs below, Petitioner purported to rely on an old line of Kentucky cases which construed "non-occupational" [1] disability clauses in insurance contracts as equivalent to "occupational" [2] clauses. Petitioner fails to mention, however, that this line of cases was expressly overruled by the Kentucky Supreme Court in *Mutual Life Ins. Co. of New York v. Bryant*, 296 Ky. 815, 177 S.W.2d 588, 590 (1943).

In any case, the Kentucky Court of Appeals noted that, even if Kentucky law did apply, the result would be the same as there was no evidence that Neuhaus was "totally disabled" prior to age sixty as required under the terms of the Plan.

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[1] A "Non-occupational" disability clause insures against a disability which prevents the insured from following *any* and *all* occupations for compensation, gain or profit. The disability provision in the Litton Plan is of this type.

[2] An "Occupational" disability clause insures against disability preventing an insured from pursuing *his own* occupation.

Moreover, if it is necessary to interpret the "total disability" provision of the Litton Plan (although it clearly requires that a participant be "totally disabled" prior to his sixtieth birthday), its terms are to be construed in accordance with the uniform principles of federal common law. *See Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 110 (1989); *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 56 (1987). To interpret ERISA plan terms under varying state law construction, as Petitioner urges, would undermine Congress's stated goal of promoting uniformity of decision with respect to the administration of ERISA plans. *See Pilot Life*, 481 U.S. at 56.

Thus, because the Kentucky Court of Appeals's decision is in accord with U.S. Supreme Court precedent, and the questions raised are neither special nor important, the Petition should be denied.

B. The Kentucky Court Of Appeals Properly Applied The Abuse Of Discretion Standard Of Review, But It Also Noted That Its Decision Would Be The Same Under A *De Novo* Standard.

The Kentucky Court of Appeals properly applied the abuse of discretion standard of review in this case because the Plan specifically gives MetLife discretionary authority to determine eligibility for benefits. The Plan expressly gives MetLife authority to review appeals from claim denials. (*See* Litton Plan Summary Plan Description ("SPD") booklet at 83-84.) The Plan states that "The Plan Administrator has delegated[3] Metropolitan Life Insurance Company as its agent to administer the Plan and to process all claims and appeals procedures and other administrative services." (SPD at 85.) The Plan further provides that MetLife: (1) "shall be responsible for making the determination and payment of

[3] ERISA permits such delegation of fiduciary responsibility. *See* ERISA § 405(c), 29 U.S.C. § 1105(c); *Madden v. ITT Long Term Disability Plan*, 914 F.2d 1279, 1283-84 (9th Cir. 1990), *cert. denied*, 111 S. Ct. 964 (1991).

benefits" (SPD at 85); (2) determine the adequacy of proof of total disability in connection with life insurance benefits (SPD at 8); and (3) require medical exams in connection with claims for disability continuation of life insurance benefits. (SPD at 9.) In view of the above Plan language, MetLife's decision to deny benefits in this case was properly reviewable under an abuse of discretion standard. *See Firestone Tire & Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989). *See, e.g., Miller v. Metropolitan Life Ins. Co.*, 925 F.2d 979 (6th Cir. 1991) (where ERISA plan provided that determination of total disability would be "on the basis of medical evidence satisfactory to the Insurance Company," decision of plan's insurer was entitled to deferential arbitrary and capricious standard of review).

Furthermore, as the Court of Appeals emphatically stated in its opinion, even if it applied a *de novo* review standard, it would "nevertheless uphold the judgment herein." (Petitioner's Appendix at 3a.) Even under a *de novo* standard, Metlife's claim denial was clearly correct where the salient and undisputed fact is that Neuhaus worked full-time at his regular job and collected his regular paycheck before and substantially after his sixtieth birthday! *See Perry v. Simplicity Engineering*, 900 F.2d 963, 966 (6th Cir. 1990).

Thus, because the Kentucky Court of Appeals has correctly applied the holding of this Court in *Firestone Tire & Rubber v. Bruch* and because no other special or important reasons exist supporting a grant of discretionary review on writ of certiorari, the Petition should be denied.

CONCLUSION

The questions raised by Petitioner are neither special nor important and do not support a grant of discretionary review. The Petition therefore should be denied.

Respectfully submitted,

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Company

Dated: New York, New York
July 29, 1992

APPENDIX

APPENDIX

LIST OF PARENT COMPANIES, SUBSIDIARIES AND AFFILIATES OF METROPOLITAN LIFE INSURANCE COMPANY, PURSUANT TO RULE 29.1

167080 Canada Inc.
2154 Trading Corporation
23rd Street Investments, Inc.
329303 Alberta Ltd.
478077 Alberta Ltd.
810597 Ontario Inc.
ACFC Corporate Finance Limited
Albany General Insurance Company Limited
Albany Home Loans Limited
Albany International Assurance Limited
Albany Life Assurance Company Limited
Albany Pension Managers and Trustees Limited
Centennial Equities Corporation
Century 21 Australasia Pty. Ltd.
Century 21 Great Lakes, Inc.
Century 21 Midwest Franchising, Inc.
Century 21 of Indiana/Kentucky, Inc.
Century 21 of Missouri, Inc.
Century 21 of New England, Inc.
Century 21 of The Northeast, Inc.
Century 21 of The Pacific, Inc.
Century 21 of The Southeast, Inc.
Century 21 Real Estate Agency Limited
Century 21 Real Estate Corporation
Century 21 Real Estate Corporation of Northern Illinois
Century 21 Real Estate of Northern California, Inc.
Century 21 Real Estate of The Carolinas, Inc.
Century 21 Real Estate of The South, Inc.
Century 21 South Central States, Inc.
Corporate Health Strategies, Inc.
Cross & Brown Associates of New Jersey, Inc.
Cross & Brown Associates of New York, Inc.
Cross & Brown Company

Cross & Brown Company of Florida, Inc.
Cross & Brown Company of Georgia, Inc.
Cross & Brown Company of Maryland, Inc.
Cross & Brown Company of Missouri, Inc.
Cross & Brown Company of New Jersey, Inc.
Cross & Brown Construction Corp.
Cross & Brown of Connecticut, Inc.
Cross & Brown Residentials, Inc.
Edison Supply and Distribution, Inc.
EL, Inc.
Farmers National Commodities, Inc.
Farmers National Company
Federal Street Financial Advisers, Inc.
First General Insurance Company
Fox Assignor, Inc.
GFM International Investors, Limited
Great Lakes Real Estate Associates, Inc.
Madison Avenue Management Corp.
Management and Risk Institute, Inc.
Marketforce International Insurance Company
MCC Silver Springs, Inc.
Met Farm and Ranch Properties, Inc.
Met Life Holdings Luxembourg
Met Life Real Estate Advisors, Inc.
Met West Agribusiness, Inc.
MetFirst Insurance Agency, Inc.
MetLife (UK) Limited
MetLife Capital Corporation
MetLife Capital Credit L.P.
MetLife Capital Holdings, Inc.
MetLife Capital, Limited Partnership
MetLife Credit Corp.
MetLife Europe I, Inc.
MetLife Europe II, Inc.
MetLife Europe III, Inc.
MetLife Europe IV, Inc.
MetLife Europe V, Inc.
MetLife Financial Acceptance Corporation

MetLife Funding, Inc.
MetLife General Insurance Agency, Inc.
MetLife Group Administrator, Inc.
MetLife Group Services Limited
MetLife Healthcare Management Corporation
MetLife Healthcare Network of Arizona, Inc.
MetLife Healthcare Network of California, Inc.
MetLife Healthcare Nttwork of Colorado, Inc.
MetLife Healthcare Network of Florida, Inc.
MetLife Healthcare Network of Georgia, Inc.
MetLife Healthcare Network of Illinois, Inc.
MetLife Healthcare Network of Kansas City, Inc.
MetLife Healthcare Network of Kentucky, Inc.
MetLife Healthcare Network of Massachusetts, Inc.
MetLife Healthcare Network of New York, Inc.
MetLife Healthcare Network of
MetLife Healthcare Network of Northern New Jersey, Inc.
MetLife Healthcare Network of Ohio, Inc.
MetLife Healthcare Network of Rhode Island, Inc.
MetLife Healthcare Network of Texas, Inc.
MetLife Healthcare Network of Wisconsin, Inc.
MetLife Healthcare Network, Inc.
MetLife Holdings, Inc.
MetLife Holdings, Netherlands BV
MetLife Independent Financial Services Limited
MetLife Securities, Inc.
MetLife Security Insurance Company of Louisiana
MetLife Texas Holdings, Inc.
MetLife-State Street Investment Services, Inc.
Metmor Financial, Inc. (CA)
Metric Assignor, Inc.
Metric Capital Corporation
Metric Institutional Realty Advisors, Inc.
Metric Institutional Realty Advisors, L.P.
Metric Investment Corp.
Metric Realty
Metric Realty, Inc.
Metric Realty Services, L.P.
Metropolitan Asset Management Corporation

Metropolitan Casualty Insurance Company
Metropolitan Financial Advisors Limited
Metropolitan General Insurance Company
Metropolitan Home Loans Limited
Metropolitan Insurance and Annuity Company
Metropolitan Insurance Company
Metropolitan Insurance Company (Bermuda) Ltd.
Metropolitan Life Financial Services Limited
Metropolitan Life Holdings Limited
Metropolitan Life Insurance Company of Canada
Metropolitan Marine Way Investments Limited
Metropolitan P&C Insurance Services, Inc.
Metropolitan Plan Managers Limited
Metropolitan Property and Casualty
Insurance Company
Metropolitan Realty Management, Inc.
Metropolitan Reinsurance Company
Metropolian Reinsurance Company (U.K.) Limited
Metropolitan Tower Corp.
Metropolitan Tower Life Insurance Company
Metropolitan Tower Realty Company, Inc.
Metropolitan Trust Company of Canada
Metropolitan Trustco (1991) Limited
Metropolitan Unit Trust Managers Limited
Mezzanine Investment Limited Partnership-BDR
Mezzanine Investment Limited Partnership-2
Mezzanine Investment Limited Partnership-6
Mezzanine Investment Limited Partnership-7
Mezzanine Investment Limited Partnership-8
Mezzanine Investment Limited Partnership-9
Mezzanine Investment Limited Partnership-10
Mezzanine Investment Limited Partnership-14
Mezzanine Investment Limited Partnership-15
MLYC Cogen, Inc.
Morguard Investments Limited
Morguard Mortgage Investment Company of Canada
MP Services, Inc.
Nebraska Farms, Inc.
Park Avenue Funding Corporation

Searles Cogeneration, Inc.
SSRM Services, Inc.
State Street Fund for Foundations and Endowments
State Street Research & Management Company
Subrown Corp.
Texas Life Insurance Company
Transmountain Land & Livestock Company
Warwick Insurance Agency, Inc.
Western Relocation Management, Inc.

AMI Partners Inc.
Blodgett Holdings, Inc.
Braelan Corp.
Briggs Plumbing Products, Inc.
Dan River Inc.
DTSS Incorporated
FB Briggs, Inc.
Genesis Seguros Generales, Sociedad Anonima
de Seguros y Reaseguros
GS Blodgett Corporation and subsidiaries
Igloo Holdings, Inc.
Igloo Products Corporation
Kolon-Met Life Insurance Co., Ltd.
Mecco Holding, Inc.
MetLife Agricultural Credit Corp.
MetLife Funding, II, Inc.
MetLife International Real Estate Equity Systems, Inc.
MetPark Funding, Inc.
Metric Institutional Apartment Fund II, L.P.
Metropolitan Life Foundation
Metropolitan Management Company
Metropolitan Series Fund, Inc.
Metropolitan Structures Management, Inc.
Metropolitan Structures West, Inc.
National Electronic Information Corporation
Parkcommunications, Inc.
Quadreal Corporation
Santander Met, S.A.
Seguros Genesis, S.A.
Tri-Gas, Inc.